

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Case No. 04-34743-DDO

Chapter 7

William Frank Kuester, III and Gail Lynne Kuester,

Debtor(s).

***NOTICE OF HEARING AND
MOTION FOR RELIEF FROM STAY***

TO: Debtor(s) and Attorney for Debtor(s); Nauni J. Manty, Chapter 7 Trustee; U.S. Trustee; and other parties in interest.

1. Bank One Wisconsin, a secured creditor of Debtor(s), by its undersigned attorney, moves the Court for the relief requested below, and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion at **10:30 am on Wednesday, October 6, 2004**, before the Honorable Dennis D. O'Brien, in Courtroom No. 228A, at the U.S. Federal Courthouse, 316 North Robert Street, St. Paul, Minnesota 55101.

3. Any response to this motion must be filed and delivered not later than Friday, October 1, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays, and holidays), or filed and served by mail not later than Monday, September 27, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays, and holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This motion arises under 11 U.S.C. §362 and Fed. R. Bankr. P. 4001. This motion is filed under Fed. R. Bankr. P. 9014 and Local Rules 9006-1, 9013-1 through 9013-3. Bank One Wisconsin seeks relief from the automatic stay of 11 U.S.C. §362 with respect to certain personal property owned by Debtor(s).

5. The petition commencing this Chapter 7 case was filed on August 13, 2004 and the case is now pending in this Court. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 1334 and 157(a), Fed. R. Bankr. P. 5005 and Local Rule 1070-1. This proceeding is a core proceeding.

6. Bank One Wisconsin holds a valid, perfected interest in a 1998 GMC Safari, vehicle identification number 1GKEL19W1WB513026 (the "Vehicle").

7. Copies of Bank One Wisconsin's agreement with Debtor(s) (the "Contract") and evidence of perfection of Bank One Wisconsin's interest in the Vehicle are attached hereto as Exhibits A and B and incorporated herein by reference.

8. Payments due under the terms of the Contract for the months of July and August 2004 totaling \$812.54 plus late charges, have not been made by the Debtor(s).

9. The balance due under the Contract is \$10,856.59 as of the date hereof. On information and belief, the fair market value of the Vehicle is approximately \$8,000.00.

10. Bank One Wisconsin's interest is depreciating, while Debtor(s) are failing to make payments. Bank One Wisconsin does not have, and has not been offered, adequate protection of its interest in the Vehicle. There is no appreciable equity in the Vehicle and, in view of the fact that this is a Chapter 7 liquidation proceeding, the Vehicle is not necessary for an effective reorganization.

11. The failure of the Debtor(s) to make payments pursuant to the Contract or otherwise provide Bank One Wisconsin with adequate protection of its interest in the Vehicle constitutes cause, within the meaning of 11 U.S.C. § 362(d)(1) and 362(d)(2), entitling Bank One Wisconsin to relief from the stay.

12. Bank One Wisconsin requests that any order modifying the automatic stay be effective immediately as allowed under Federal Bankruptcy Rule 4001(a)(3).

13. If testimony is necessary as to any facts relevant to this motion, T. Johnson, or some other representative of Movant, will testify on behalf of Bank One Wisconsin.

14. This notice of motion and motion also serves as notice of default as may be required by Cobb v. Midwest Recovery Bureau Co., 295 N.W.2d 232 (Minn. 1980). If the default is not cured before the hearing, Bank One Wisconsin will repossess the Vehicle promptly upon the Court signing the Order.

15. THIS IS AN ATTEMPT TO COLLECT A DEBT, AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

WHEREFORE, Bank One Wisconsin respectfully moves the Court for an order (i) modifying the automatic stay of 11 U.S.C. §362 so as to permit Bank One Wisconsin to foreclose its interest in the Vehicle in accordance with Minnesota law, (ii) finding that Bankruptcy Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure is not applicable, and (iii) granting such other relief as may be just and equitable.

Dated: September 13, 2004

STEWART, ZLIMEN & JUNGERS

By /s/ Bradley J. Halberstadt
Bradley J. Halberstadt (#215296)
Attorneys for Movant
430 Oak Grove Street, Ste. 200
Minneapolis, Minnesota 55403
(612) 870-4100

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

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Chapter 7

William Frank Kuester, III and Gail Lynne Kuester,

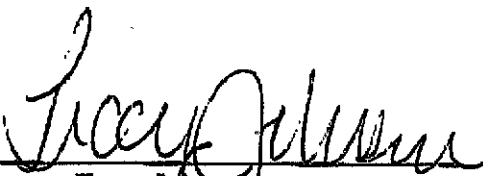
Debtor(s).

VERIFICATION

I, Tracy Johnson, a Bankruptcy Specialist of Bank One Wisconsin declare under penalty of perjury
that the following is true and correct to the best of my knowledge, information and belief:

Dated:

9/10/04



Tracy Johnson
Bankruptcy Specialist
Bank One Wisconsin

RETAIL INSTALLMENT CONTRACT AND SECURITY AGREEMENT	Seller WHITE BEAR LAKE SUPERSTORE 3900 W. HIGHWAY 51 WHITE BEAR LAKE MN 55110	Buyer WILLIAM FRANK KUESTER GAIL LYNN KUESTER 1821 CLOUD DR NE BLAINE MN 55449
No. Date DECEMBER 2nd, 2000	You and "us" mean the Seller above, its successors and assigns. "You" and "your" mean each Buyer above, and collectively, jointly and individually.	

SALE: You agree to purchase from us, over time, the Motor Vehicle (Vehicle) and services described below. Your purchase is subject to the terms and conditions of this contract and security agreement (Contract). The Vehicle is sold in its present condition, together with the usual accessories and equipment.

Description of Vehicle: Year 1998 VIN 16KLSH1W6512026 Other
Motor Vehicle Make GMC Year 1998 Model SAFARI
Purchased Model SAFARI

Description of Trade-In

SECURITY: To secure your payment and performance under the terms of this Contract, you give us a security interest in the Vehicle, all accessories, attachments, accessories, and equipment placed in or on the Vehicle, together called Property. The proceeds of the Property. You also assign to us and give us a security interest in proceeds and premium returns of any insurance and service contracts purchased with this Contract.

PROMISE TO PAY AND PAYMENT TERMS: You promise to pay in the principal amount of \$20872.68, plus finance charges resulting on the unpaid balance at the rate of 10.75% per year from today's date until paid in full. Finance charges accrue on a daily basis. You agree to pay this Contract according to the payment schedule and late charge provisions shown in the TRUTH IN LENDING DISCLOSURES. You also agree to pay any additional amounts according to the terms and conditions of this Contract.

LOAN ADMINISTRATION FEE: You agree to pay an additional, non-refundable loan administration fee of \$35.00 that will be paid in cash, paid per rate over the contract term, withdrawn from the proceeds (if this fee is withheld from the proceeds, the amount is included in the principal sum).

DOWN PAYMENT: You also agree to pay, or apply to the Cash Price, or to deduct today's date, any cash, rebate and net trade-in value described in the ITEMIZATION OF AMOUNT FINANCED. You agree to make deferred payments as part of the cash down payment as reflected in your Payment Schedule.

TRUTH IN LENDING DISCLOSURES U I U D 2

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	AMOUNT FINANCED	TOTAL OF PAYMENTS	TOTAL SALE PRICE
The cost of your credit as a yearly rate.	The dollar amount the credit will cost you.	The amount of cash provided to you or on your behalf.	The amount you will have paid when you have made all scheduled payments.	The total cost of your purchase on credit, including your own payments or scheduled payments.
10.75%	\$658.76	\$20872.68	\$26461.44	\$26461.44

Payment Schedule: Your payment schedule will be

Number of Payments	Amount of Payments	When Payments Are Due
72	\$367.27	MONTHLY, BEGINNING JANUARY 16th, 2001

Security: You are giving a security interest in the Motor Vehicle purchased.

Default Charge: If a payment is more than 10 days late, you will be charged 5% of the unpaid amount of the amount allowed by law under Minn. Stat. § 47.50. This amount may increase as late as to charge for the highest.

Prepayment: If you pay off this Contract early, you will not have to pay a penalty.

Contract Provisions: You can see the terms of this Contract for any additional information about nonpayment, default, any required payment before the scheduled date, and payment returns and penalties.

CREDIT INSURANCE: Credit life, credit disability (accident and health), and any other insurance coverage quoted below, are not required to obtain credit and we will not provide them unless you sign and agree to pay the additional premium. If you want such insurance, we will obtain it for you (if you qualify for coverage). We are quoting below ONLY the coverage you have chosen to purchase.

Credit Life Insured

Single Joint Term \$ N/A Term N/A

Credit Disability Insured

Single Joint Term \$ N/A Term N/A

Your attention below means you want (only) the insurance coverages quoted above. If none are quoted, you have declined any coverage we offered.

Buyer date Buyer date

PROPERTY INSURANCE: You must insure the Property securing this Contract. You may purchase or provide the insurance through any insurance company reasonably acceptable to us. The minimum coverage deductible may not exceed \$ N/A. If you get insurance from or through us you will pay \$ N/A for N/A.

This premium is calculated as follows:

- ☐ \$ N/A Comprehensive, Collision Coverage \$ N/A
- ☐ \$ N/A Comprehensive, Collision Coverage \$ N/A
- ☐ First-Tier and Combined Additional Coverage \$ N/A

Liability insurance coverage for bodily injury and motor vehicle damage caused to others is not included in this Contract unless checked and indicated.

MOTOR VEHICLE SERVICE CONTRACT: With your purchase of the Vehicle, you agree to purchase a Motor Vehicle Service Contract to cover

This Service Contract will be in effect for 60 months/60,000 miles

This contract will be canceled if not assigned

ASSIGNMENT: This Contract and Security Agreement is assigned to BANK ONE, WISCONSIN, Milwaukee, WI 53202

The Assignee, phone (608) 222-2222. This assignment is made under the terms of a separate assignment. Under the terms of the ASSIGNMENT BY TELLER, this assignment is made with recourse. Seller By 12/02/2000

ITEMIZATION OF AMOUNT FINANCED

Vehicle Price (net sales tax of \$ 1104.65)	\$ 18099.59
Service Contract, Paid to JMA	\$ 250.00
Manufacturer's Rebate	N/A
Cash Down Payment	N/A
Deferred Down Payment	N/A
Total Cash/Trade-In	N/A
Trade-In Allowance	N/A
Less: Amount owing	N/A
Paid in	N/A
Net Trade-In (if minus \$)	N/A
Net Cash/Trade-In (if plus \$)	N/A
Down Payment (if shown as \$0 it is negative)	N/A
Unpaid Balance of Cash Price	\$ 20448.59
PAID to Public Official - Filing Fee	\$ 18.00
Insurance Premiums	N/A
Amount to Finance the \$ (if \$ is negative)	\$ N/A
To JMA	\$ 380.00
To WHITE BEAR LAKE SUPERSTORE	\$ 36.00
To	\$ N/A
To	\$ N/A
Total Other Charges/Amounts Paid in Cash	\$ 423.00
Less: Prepaid Finance Charges	N/A
Amount Financed	\$ 20872.68

We may retain or receive a portion of this amount.

NOTICE TO BUYER

(1) Do not sign this agreement before you read it or if it contains any blank spaces. (2) You are entitled to a completely filled-in copy of this agreement. (3) Under the law, you have the right to pay off in advance the full amount due and under certain conditions to obtain a partial refund of the finance charge. (4) IMPORTANT: THIS MAY BE A BINDING CONTRACT AND YOU MAY LOSE ANY DEPOSITS IF YOU DO NOT PERFORM ACCORDING TO ITS TERMS.

BY SIGNING BELOW BUYER AGREES TO THE TERMS ON PAGES 1 AND 2 OF THIS CONTRACT AND ACKNOWLEDGES RECEIPT OF A COPY OF THIS CONTRACT.

Buyer
Signature WILLIAM FRANK KUESTER 12/02/2000
Signature GAIL LYNN KUESTER 12/02/2000
Seller By 12/02/2000

MINNESOTA RETAIL INSTALLMENT CONTRACT AND SECURITY AGREEMENT
© 1998, 1999 DENNIS REIMER CO., L.P.A. All Rights Reserved 00776

MINN. STAT. § 47.50 - NOT FOR MANUFACTURED HOMES

BANK ONE ARIZONA

Fax:602-674-7194

Sep 3 2004 15:22 P.05

MINNESOTA DEPARTMENT OF PUBLIC
DRIVER & VEHICLE SERVICES DIVISION
445 MINNESOTA ST. ST. PAUL, MN 55101
CONFIRMATION OF LIEN PERFECTION - DEB

1210002417202 70 384
gh1034
98 GMC LIGHT DUTY SAFAR
WILLIAM FRANK KUESTER

1/17/01

OPEN

KUESTER WILLIAM FRANK
KUESTER GAIL LYNNE
1821 CLOUD DRV NE
BLAINE MN 55449

BRE067

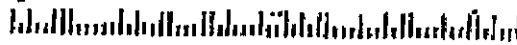
Year 98	Make GMC	Model ESSAF	Title NR C0100N9D6
VIN 1GKEL19W1W8513026		Security Data 12/02/00	Regalty NO

1ST SECURED PARTY

LIEN HOLDER

RETAIN THIS DOCUMENT - See reverse
side of this form for removing this lien.

BANK ONE WI
P O BOX 37264
LOUISVILLE KY 40233-7264



UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

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***MEMORANDUM IN SUPPORT OF
MOTION FOR RELIEF FROM STAY***

Bank One Wisconsin submits this memorandum of law in support of its motion for relief from the stay in the above-entitled matter.

FACTS

Bank One Wisconsin holds a perfected interest in a 1998 GMC Safari with a vehicle identification number 1GKEL19W1WB513026 (the "Vehicle"). Payments due under the terms of the Contract for the months of July and August 2004 totaling \$812.54 plus late charges, have not been made by the Debtor(s). The balance due under the Contract is \$10,856.59 as of the date hereof. On information and belief, the fair market value of the Vehicle is approximately \$8,000.00.

ARGUMENT

Pursuant to Section 362(d)(1) of the Bankruptcy Code, relief from the automatic stay shall be granted upon request of a creditor "for cause, including the lack of adequate protection of an interest in property of such [creditor]." 11 U.S.C. Section 362(d)(1). No payments have been made as required by the Contract between the Debtor(s) and Bank One Wisconsin has otherwise not been provided with adequate protection of interest in the Vehicle. Such failure constitutes cause, within the meaning of Section 362(d)(1), entitling Bank One Wisconsin to relief from the stay. United Savings Assn. of Texas v. Timbers of Inwood Forest Assoc., Ltd. (In re Timbers of Inwood Assoc., Ltd.), 484 U.S. 365, 108 S.Ct. 626, 98 L.Ed.2d 740 (1988).

Pursuant to Section 362(d)(2) of the Bankruptcy Code, relief from the stay is also appropriate where no equity exists and the property is not necessary to an effective reorganization. In re Albany Partners, Ltd., 749 F.2d 670 (11th Cir. 1984). The balance due under the Contract is \$10,856.59 as of the date hereof. The fair market value of the Vehicle is approximately \$8,000.00. Clearly, no appreciable equity exists in the Vehicle. Finally, as this a Chapter 7 case, the Vehicle is not necessary to an effective reorganization.

CONCLUSION

For all the reasons set forth herein, Bank One Wisconsin is entitled to an order terminating the automatic stay of 11 U.S.C. § 362 and authorizing it to foreclose its interest in the Vehicle in accordance with Minnesota law.

Dated: September 13, 2004

STEWART, ZLIMEN & JUNGERS

By /s/ Bradley J. Halberstadt
Bradley J. Halberstadt (#215296)
Attorneys for Movant
430 Oak Grove Street, Ste. 200
Minneapolis, Minnesota 55403
(612) 870-4100

U.S. BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

William Frank Kuester, III and Gail Lynne Kuester

Debtor(s).

UNSWORN DECLARATION

FOR PROOF OF SERVICE

Bky. No. 04-34743-DDO

Bradley J. Halberstadt, an agent of Stewart, Zlimen & Jungers, attorney(s) licensed to practice law in this court, with office address of 430 Oak Grove Street, Ste. 200, Minneapolis, Minnesota 55403, declares that on the date set forth below, I served the annexed **Notice of Hearing and Motion For Relief From Stay** upon each of the entities named below by mailing to each of them a copy thereof by enclosing same in an envelope with first class mail postage prepaid and depositing same in the post office at Minneapolis, Minnesota addressed to each of them as follows:

United States Trustee
Suite 1015
300 South 4th Street
Minneapolis, MN 55415

(Attorney for Debtor(s))
George C. Riggs
607 Hwy 10 NE, Ste. 206
Blaine, MN 55434

(Trustee)
Nauni J. Manty
Rider Bennett LLP
333 S 7th St Ste 2000
Minneapolis, MN 55402

(Debtor(s))
William Frank Kuester, III
1825 Riverwood Drive
Burnsville, MN 55337

Gail Lynne Kuester
1821 Cloud Drive NE
Blaine, MN 55449

And I declare, under penalty of perjury, that the foregoing is true and correct.

Date: September 13, 2004

Signed: /e/ Bradley J. Halberstadt

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

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***ORDER GRANTING
MOTION FOR RELIEF FROM STAY***

The above-entitled matter came before the Court for hearing on Wednesday, October 6, 2004 on the motion of Bank One Wisconsin seeking relief from the automatic stay of 11 U.S.C. §362.

Appearances were noted in the Court's record. Based upon the proceedings on said date, the statements of counsel, and all of the files and records herein, the Court now finds that cause exists entitling Bank One Wisconsin to the relief requested.

NOW, THEREFORE, IT IS HEREBY ORDERED that the automatic stay of 11 U.S.C. §362 is immediately terminated as to Bank One Wisconsin, and Bank One Wisconsin is authorized to foreclose its interest in the subject 1998 GMC Safari, vehicle identification number 1GKEL19W1WB513026 in accordance with Minnesota law. Notwithstanding Fed R. Bankr. P. 4001(a)(3), this order is effective immediately.

Dated: _____

Dennis D. O'Brien
United States Bankruptcy Judge